UNITED
NATIONS

E

Economic and Social
Council

Distr.
GENERAL

E/CN.4/1999/124
19 March 1999

Original: ENGLISH

COMMISSION ON HUMAN RIGHTS
Fifty-fifth session
Item 20 of provisional agenda

RATIONALIZATION OF THE WORK OF THE COMMISSION

Letter dated 9 March 1999 from the Permanent Mission of the Republic of Korea to the United Nations Office at Geneva, acting as Coordinator of the Asian Group, addressed to the secretariat of the Commission on Human Rights

The Asian Group requests that the position paper of the Asian Group on the Bureau's report regarding the review of mechanisms of the Commission (E/CN.4/1999/104 (annex herewith)*, which is the product of a two-month-long endeavour by all members of the Group, be published as an official United Nations document and circulated to all interested parties prior to the commencement of the fifty-fifth session of the Commission.

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* The annex is reproduced as received in the language of submission only.

GE.99-11553 (E)

Annex

Position Paper of the Asian Group on the Report of the Bureau of the 54th Session of the Commission on Human Rights submitted pursuant to Commission decision 1998/112

I. Introduction:

1. The Asian Group wishes to extend its complements to the efforts made by the Bureau in the arduous task of preparing the report on the review of mechanisms and will continue to seek all cooperative avenues in the pursuit of improving the mechanisms of the Commission on Human Rights for the purpose of the protection and promotion of human rights universally.

2. We appreciate that the report has offered various recommendations which, in the Bureau's perception, are aimed at improving the effectiveness of the Commission. However we also observe that many of those recommendations advocate intrusiveness as a means of enhancing the effectiveness of the mechanisms as opposed to enlisting, and focusing on the cooperation of the States concerned.

3. Over the last year, the Asian Group has actively participated in the exercise of the Review of Mechanisms, and has made particular efforts in the preparation of a common position on the Review of Mechanisms which was subsequently submitted to the OHCHR. It is with regret and concern that the Group notes, however, that the views of its 34 member countries have not received just and balanced reflection in the report by the Bureau.

4. For these reasons, the Asian Group avails itself of this opportunity to present its common views to states, the OHCHR, other concerned international organizations, NGOs and other interested individuals. The Group requests that the points illustrated in the paper be duly reflected in the course of our discussions at the forthcoming Commission. It is our expectation that our efforts to enhance the effectiveness of the mechanisms will find widespread support.

5. Towards these ends, the Asian Group has attached, herewith, the Statement by the Asian Group Coordinator on Item 3 - Organization of the Work of the Session at the 54th Session of the Commission on Human Rights of March, 1998, and the Written Submission of the Asian Group on the Review of Mechanisms and Bodies of the Commission on Human Right of July, 1998.

II. General Comments

6. The Asian Group views that a number of the recommendations made by the Bureau seek to enlarge the role of the CHR monitoring mechanisms, thereby expanding the scope of discussions on one agenda item (country situations) at the expense of other agenda items and using the CHR and its Bureau as a means to pressure States to cooperate with human rights mechanisms. These proposals will only lead to further politicization of the CHR and its activities.

7. In this context, the Asian Group reminds the CHR of the spirit of the two draft resolutions L.2 and L. 105 introduced at the 53rd Commission which called for an end to politicization and selectivity together with the promotion of dialogue,

cooperation and consensus building.

8. The report also lacks conceptual ideas on how balanced and non-selective human rights programs can be constructed and maintained. The Asian Group believes that the report is found wanting in providing guarantees to maintain the VDPA benchmark of indivisibility that is to pay more attention to economic, social and cultural rights as well as the right to development.

9. We should also like to indicate that the Bureau intends to expand its own scope and functions far beyond those performed by any Bureau in the past and other such bodies elsewhere in the UN system. The report seeks to make the Bureau an inherent and permanent part of the monitoring activities of the CHR. This is an unhealthy development and will result in reducing the credibility of the Bureau.

III. Assessment of the Recommendations of the Bureau

10. In order to better clarify and express the Asian Group's views, specific comments are provided below on the 13 recommendations for action found in the report.

11. **Recommendation 1**: The Asian Group appreciates the efforts of the Bureau to streamline the network of mandates. However, the Group is unable to support the present recommendation in its current form due to its failure to consider the full, broad range of mechanisms. We note that the recommendation has been made at a stage when creation of special procedures to look at various aspects of civil and political rights are almost completed and a similar exercise has just begun in the field of ESC rights. Instead of giving more attention to ESC Rights, those specifically recommended for consolidation seek instead to eliminate mandates in the field of ESC Rights. The process of looking at mandates for consolidation should be universal, fair and without politicization.

12. **Recommendation 2:** This recommendation states that the Chair of the Commission should play a role in assisting in securing governmental responses at the request of the special procedure concerned. Though presumably designed to create a more expeditious system, this recommendation nevertheless serves to undermine the credibility and impartiality of the Chairman by tying his role to those of the special procedures and also increases the burdens governments face in responding to these urgent appeals. The Asian Group, on these grounds, does not support this recommendation.

13. **Recommendation 3:** The Asian Group finds it odd that the Bureau would recommend that appointments to special procedure posts be made by the Chair of the Commission following consultations with the Commission's Bureau as opposed to a practice whereby appointments would be made by the Bureau in consultation with regional groups. As States become members of the Bureau in their capacity as representatives of regional groups, they must speak collectively for the groups they represent. The Asian Group therefore does not support this recommendation.

14. **Recommendation 4**: Recognizing that Human Rights is one of several issues faced by ECOSOC, the Asian Group is concerned that the Commission may be commenting on the issues that are within the prerogatives of ECOSOC.

15. **Recommendation 5**: The Asian Group agrees with the recommendation to maintain the current practice of standard 3-year terms for thematic mechanisms. However, the suggestion to give to the CHR more than one year mandates for country-specific mechanisms -- though on a case-by-case basis -- could not be accepted on the grounds that such a measure will pre-empt the CHR's decision-making prerogatives.

16. **Recommendation 6:** In accordance with the earlier submission of the Asian Group, the recommendation to establish a limitation of six years per mandate is warmly welcomed and in principle the Group accepts the position of the recommendation. Pertaining to the issue of re-assignment, the Asian Group is hesitant to support the practice of reassignment, and prefers instead to encourage a system whereby new individuals are brought into the system.

17. **Recommendation 7:** The Bureau has suggested that at each session of the Commission there should be regular, focused and systematic deliberations on serious incidents or situations involving a failure or denial of cooperation by governments with the Commission or its mechanisms. This recommendation, however, has much the same effect as creating a new agenda item on country situations because the process of determining which countries are or are not cooperating will be political and not objective. The process has the unfortunate result of creating an environment that is adversarial and not conducive to facilitating the stated objective of encouraging respect and cooperation. Furthermore, it is in the interest of the Commission to avoid confrontation among states and also to focus on trends rather than isolated incidents. For these reasons, the Asian Group is unable to support this recommendation.

18. **Recommendation 8:** It was recommended in the Written Submission of the Asian Group that efforts be made to decrease the overall length of reports and to circulate the original language of the documents in advance of the other versions produced in the other UN official languages. The Asian Group is pleased to observe that the Bureau, in recommendation 8, has made such welcome efforts to accomplish these ends. Although this recommendation does not succeed in addressing the length of the documents per se, sub-parts a and b are fully accepted and appreciated.

19. In sub-part c, regarding executive summaries, it is important to note that, while these summaries may serve the useful purpose of providing a brief, accurate presentation of a more lengthy document, it is inappropriate for the OHCHR to develop standard formats for such summaries as the contents of all documents differ, and undue attention will necessarily be drawn to categories that the OHCHR has *a priori* determined to be relevant, but are not necessarily reflective of the document's contents. Executive summaries should be brief, factual and balanced summaries of the document on which they report, and should be structured in such fashion as to reflect the main points of the document itself, paying all due attention to the intentions of the document's authors. Sub-part c is therefore accepted in a qualified manner, with objections hereby raised to the means of generating the proposed executive summaries. Ideally, the author of the

report should prepare the executive summary.

20. Sub-item d cannot be accepted by the Asian Group for reasons just stated. The *a priori* decision to illuminate certain types of information in the executive summaries runs counter to the idea of providing a representative, shorter-length document that accurately reflects the document on which it reports. Specifically calling attention to "observations or recommendations concerning serious incidents or situations involving a failure or denial of cooperation with the Commission or its mechanisms" is therefore not consistent with this balanced and factual approach.

21. **Recommendation 9:** This recommendation, designed to devise a means of utilizing and following up on the work of the special procedures, is poorly conceived and should be dropped. As stated regarding recommendation 8, executive summaries are tools designed to aid in the reading of lengthy documents. It is, specifically, a logistical tool, and not part of a process to selectively illustrate or illuminate bits of data of interest to the Commission. It is therefore inappropriate for such summaries to form the "principle basis" for anything, let alone for organizing discussion during dialogues on state cooperation. As one would be ill advised to confront the author of a book having read only the jacket summary, the executive summary is no substitute for the full report and never should be divorced from it else the contents of the document later be viewed as superfluous.

22. **Recommendation 10:** This recommendation calls for a new document to be prepared by the OHCHR in September of every year which summarizes the progress realized and steps taken in connection with the recommendations of the mechanisms for the Bureau to review in the advance of the human rights debate in the General Assembly. The Bureau would then consider what appropriate steps it should take or what advice it may offer to concerned parties regarding follow-up. This effectively elevates the Bureau to the status of a new monitoring body and is contrary to the present duty and function of that organ. The secretariat alone cannot, and at no point in the future should be able to, independently pass judgments on state actions. This is a task reserved, at present, for the special procedures themselves. No support, therefore, can be granted to this recommendation.

23. **Recommendation 11:** Recommendation 11 proposes an alternate 1503 procedure which involves the creation of a new body of five independent experts appointed by the Chairman. It also suggests two phases of deliberation at the Commission level. However, we cannot support the recommendation for the following reasons: First, the report does not make clear the reason and grounds for newly setting up a body to conduct the procedure which consists of five untested members appointed by the Chairman of the CHR, replacing the Working Group on Communications which presently consists of five members of the Sub-Commission. Second, the suggested process of two phases of deliberations at the Commission may encourage politicization and undermine confidentiality of the procedure. And third, a span of five months in which governments are obliged to respond, provides too little time for the concerned government to prepare an adequate response.

24. Therefore, the Asian Group is of the view that the unanimous recommendation made by the Group in its written submission of July, 1998 (namely that the only reform required is to have the Working Group on Communications meet twice, first to screen communications to decide what should be referred to Governments for a response and then, to decide on the basis of responses from Governments which communications should be referred to the Sub-Commission) must be accepted. Additionally, we would like to reiterate our suggestion in the previous written submission that the first meeting of the Working Group on Communications would be requested to ensure that 1503 submissions meet the following pre-conditions: A) They exhaust domestic remedies; B) They demonstrate that the matter under consideration is a gross and reliably attested violation of human rights and fundamental freedoms; C) They are clearly devoid of politicization.

25. **Recommendation 12:** The Asian Group is satisfied with the renewed emphasis on role of the Sub-Commission as a "think tank" but remains concerned about its actions with regard to country situations. The Bureau's recommendations in this regard are welcome insofar as they propose an abolition of the practice of passing all resolutions and reaffirm its status as a think tank. The Bureau, however, recommends a retention of the country situations debate and that a summary be forwarded to the CHR.

26. The main problem in the recommendation is the attempt to change a democratic procedure of direct election by members of the CHR for a non-democratic procedure of nomination by the Chair. This, along with related issues such as term limits; the need to ensure that members do not hold an office in the executive branch of the Government, etc. should be rejected. No valid justifications have been provided for the arbitrary proposals that the period of the Sub-Commission session be reduced to two weeks and that the membership be reduced from 26 to 15. The Sub-Commission has been improving itself and is doing important work in the field of ESC rights and terrorism, etc. There is no reason whatsoever to proceed in such haste. The Asian Group is therefore of the view that this recommendation be accepted without changing the election procedures, the size of the body or reducing the length of the session.

27. **Recommendation 13:**. Sub-item (a) is welcomed by the Asian Group. On (b) the Asian Group would like to recommend a flexible approach and on (d) it would like to know the financial implications of providing chairpersons with such standing authority. However, it is not clear what the Bureau's intention is regarding the matter of consensus. Regarding sub-item c, it is the view of the Asian Group that every effort should be made to reach consensus on standard-setting exercises, and if required these rules of procedure should be amended.

IV. Conclusions and Suggestions

28. Considering that only consensual agreements can secure genuine compliance, it is necessary for all interested parties to pursue dialogue and cooperation rather than to resort to enforced means of effectiveness. Nevertheless, it is unfortunate that no practical proposals have been put forward to enhance constructive dialogue and cooperation with States as better alternatives to confrontational approaches.

29. For this reason, and those others provided in this paper, the Asian Group reemphasizes the following elements as being particularly important for the mechanisms of the Commission. These are:

- Enhancing constructive dialogue, communication and cooperation with States as better alternatives to confrontational approaches;
- Recognizing the universality, indivisibility and inter-dependence of human rights;
- Avoiding politicization and selectivity;
- Paying more attention to economic, social and cultural rights, as well as the right to development, so as to bring about the required, more appropriate balance;
- Paying more attention to the promotional aspects of human rights by Special Rapporteurs, to bring about the required, more appropriate balance with the protection of human rights;
- Paying due regard to, and respecting the cultural and religious particularities of each society as these particularities define the milieu in which human rights and fundamental freedoms are realized and exercised;
- Paying attention to, and seeking out an understanding of the causes for lack of cooperation from governments in those situations where difficulties arise between the mechanisms and governments;
- Seeking regional balance and gender balance in the staffing and functioning of the mechanisms in the United Nations system;
- Enhancing the promotional role of the mechanisms by, *inter alia*, assisting states in their national capacity building on human rights through advisory services and the technical cooperation programme;
- Providing institutional arrangements for negotiations on country situation resolutions by the Bureau of the Commission. The negotiations should be by a member of the Bureau with participation by a representative of the country concerned.

30. In light of the differing views on the contents of the Bureau's report, and of the sometimes conflicting views of large groups of states, The Asian Group finds it imperative that a post-sessional, open-ended working group of Governments -- based on the principle of consensus -- be set up to examine all important issues that the Bureau has raised and to review the Bureau's proposals with a view towards modifying them as possible to achieve the best results for all.

* *It is hereby noted that Japan is not associated with all the views herein expressed by the Asian Group in this Position Paper.*

Enclosures: *

1. Statement by the Asian Group Coordinator on Item 3 - Organization of the Work of the Session at the 54th Session of the Commission on Human Rights;
2. Written Submission of the Asian Group on the Review of Mechanisms and Bodies of the Commission on Human Rights.

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* Available for consultation in the files of the Secretariat.